

UNITED STATES PATENT AND TRADEMARK OFFICE

In re U.S. Patent No.6,577,403	:	Office of Petitions
Issued: June 10, 2003	:	
Application of: Jerome Primot et al	:	
Serial No. 09/592,963	:	Attorney's Docket No. 19133
Filed: June 13, 2000	:	
For: ACHROMATIC OPTICAL	:	
INTERFEROMETER WITH	:	
CONTINUOUSLY ADJUSTABLE	:	
SENSITIVITY	:	

REQUEST FOR RECONSIDERATION OF DISMISSAL OF  
PATENTEE'S PETITION TO REVIVE-UNAVOIDABLE

Mail Stop: Petitions  
Commissioner of Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

In accordance with the provisions of 37 CFR §1.378(e), Petitioner, ONERA (Office National d'Etudes et de Recherches Aérospatiales), owner of the subject patent, hereby requests reconsideration of the dismissal of the Petition to Revive-Unavoidable, as set forth in the Decision on Petition of the Office of Petitions dated September 5, 2012.

For the reasons set forth below, it is the position of Petitioner that it has always been the intention of ONERA, the patent owner, to maintain the subject U.S. patent in force, and that the patent expired on June 11, 2007, as a result of unavoidable delay resulting from an inadvertent docketing error by reasonably prudent and careful men in relation to their most important business, relying on worthy and reliable employees.

Accordingly, Petitioner prays that the Director of the Office declare that the expiration of the subject patent for failure to timely pay the first and second

maintenance fees was the result of an unavoidable delay, and that the patent be revived.

Petitioner has previously submitted the required first and second maintenance fees, and the late surcharge, and the required \$400 petition fee is submitted herewith.

In support of this Request for Reconsideration, there are submitted herewith, with exhibits, the Declaration of Hervé Lachaud, Head of Protection and Management of Intellectual Property of ONERA, the Petitioner; the second Declarations of Roland Lapoux and Sandrine Hamour of the firm of MARTINET & LAPOUX, of Paris, France, which was responsible for the payment of the first maintenance fee; the second Declaration of Daniel David of the firm of GEVERS FRANCE, of Paris, France, which was responsible for payment of the Second Maintenance fee; and the Declaration of Tom Hoffmann, Patent Annuities, Denemeyer & Company, of Howald, Luxembourg.

(1) Declaration of Hervé Lachaud

Mr. Lachaud stated that ONERA transmitted to the firm of Martinet and Lapoux on November 9, 2006, the sum of € 1639.27 for payment of the first maintenance fee (Exhibit ii3), and, assuming that the subject patent was still in force, the sum of € 2,221.00 was transmitted to Gevers France on January 5, 2011, for payment of the second maintenance fee (Exhibit iii2).

By the letter from Novagraaf Technologies dated December 6, 2011, ONERA first learned that the subject patent had lapsed for non-payment of the first maintenance fee. ONERA examined the PAIR records of the USPTO on January 13, 2012 (Exhibit iii3), and promptly contacted Daniel David of Gevers France, as acknowledged by Mr. David on January 16, 2012 (Exhibit iii4)

Accordingly, Petitioner alleges that the initial Petition to Revive - Unavoidable was filed promptly after the patentee became aware of the expiration of the patent.

(2) Second Declaration of Roland Lapoux

Mr. Lapoux stated that in 2005, the firm of Martinet & Lapoux proceeded to upgrade their old MisCab docketing system to a new, improved LOLA docketing

system. In late 2005 and early 2006, employees of Martinet & Lapoux took instruction regarding the new LOLA docketing system both on-site and at the OrdiPat facility.

In April, 2006, the previous bookkeeper, Alain Plannier, left Martinet & Lapoux, and Sandrine Hamour assumed the docketing responsibilities for the firm. Sandrine Hamour received instruction from Messrs. Lapoux and Plannier, and also received relatively expensive (€ 1196.00; Exhibit ML6) professional training on the LOLA system regarding patents and maintenance fees. Joelle Azevedo of OrdiPat was also involved in the training of Ms. Hamour (Exhibit ML7), and in the supervision and monitoring of the data transfer to the LOLA system. The migration of patent data from the prior MisCab system to the new LOLA was conducted by OrdiPat, on July 4, 2006, at a cost of € 5,980 (Exhibit ML10). Sandrine Hamour and her assistants continued to conduct reliability tests to assure the accuracy of the data transfer.

Foreign maintenance fees were customarily paid by Martinet & Lapoux for its clients through Dennemeyer & Company of Howald, Luxembourg. On a monthly basis, Sandrine Hamour checked the Dennemeyer reports with the LOLA software entries, and to avoid omissions, Mr. Lapoux often double-checked maintenance fee matters from his own records.

Mr. Lapoux acknowledged that ONERA authorized payment of the first maintenance fee on July 3, 2006, and stated that he has made a diligent attempt to determine why this fee was not paid. He requested that Ms. Hamour prepare a detailed report on the matter, and also requested that Tom Hoffmann of Dennemeyer review its records and confirm that it had never been instructed by Martinet & Lapoux to pay the first maintenance fee.

Mr. Lapoux concluded from the report of Sandrine Hamour that the error of non-payment of the first maintenance fee resulted from: (1) a change in state of the LOLA processing system from "Reminded" to "Processed", which resulted in the generation of an invoice to ONERA (Exhibit D14); (2) that a work overload resulted in the failure of Sandrine Hamour to send the appropriate payment instruction letter to Dennemeyer; and (3) the disappearance of the payment instruction letter from

ONERA of July 3, 2006, which also contributed to her failure to send the payment instruction letter to Dennemeyer.

On April 1, 2008, the firm of Martinet & Lapoux was merged into Bloch & Bonnetat, and then into Gevers France. Sandrine Hamour transferred the LOLA maintenance fee records to Bloch & Bonnetat, including the docket entry regarding the payment of the second maintenance fee on the subject patent. On July 1, 2008, she ceased to handle the maintenance fees for Martinet & Lapoux clients. For several months after this date, however, she continued to provide Gevers Renewals with maintenance fee information derived from the LOLA system.

(3) Second Declaration of Sandrine Hamour

Sandrine Hamour stated that on March 16, 2006, she became the bookkeeper and annuity-managing clerk for Martinet & Lapoux, succeeding Alain Plannier, who left on April 21, 2006. From March, 2006 to June, 2006, she used the prior MisCab docketing software, and started to test and use the new LOLA docketing software which was being adopted by Martinet & Lapoux to replace the MisCab system. She received training on the LOLA system from Joelle Azevedo of OrdIPat (ML6 and ML7), and was involved with her assistants in the migration of docketing data from the MisCab system into the LOLA system.

At the request of Mr. Lapoux, she described in great detail the maintenance fee operation of the LOLA system by Martinet & Lapoux, and the monitoring and testing of the system by her and other Martinet & Lapoux employees.

In Section d1 of her Declaration, Ms. Hamour acknowledged receipt of the payment instructions from ONERA dated July 3, 2006, to pay the first maintenance fee in the subject patent. In Section d8, she indicated that she entered these instructions in the LOLA records, which resulted in the generation of the invoice to ONERA on October 23, 2006 (Exhibit D14). Because of a work overload at the end of October 2006, she forgot to edit and to transmit a letter of payment order relative to this first maintenance fee to Dennemeyer. This was confirmed by the Declaration of Tom Hoffmann of Dennemeyer.

In Section d17, Ms. Hamour reported on the receipt from ONERA of the sum of € 1630.27 for payment of the first maintenance fee in the subject patent (Exhibit

D30), and the corresponding bookkeeping entries. In Section d18, she indicated that she handled 450 to 500 maintenance fees per year without particular problems, with the exception of the subject patent.

As a consequence of her detailed review, Ms. Hamour concluded that the docketing error here occurred as a result of an incorrect "Processed" entry by her in the LOLA records, her work overload on October 23, 2006, as well as the disappearance of the ONERA payment instruction of July 3, 2006, in her portfolio of due dates in December, 2006.

Ms. Hamour declared that: "Though I exercised the due care of a reasonably prudent person to manage the maintenance fees of MARINET & LAPOUX in 2006, I could not avoid the delay in timely paying the first maintenance fee of US patent 6,577,403."

(4) Second Declaration of David Daniel

Mr. Daniel explained the double transfer procedure of the LOLA system patent portfolio of Martinet & Lapoux into the WorldSuite patent managing computer system of Gevers France. The records transferred to Gevers France indicated that the first maintenance fee had been paid in the subject patent.

Mr. Daniel further explained that a temporary work burden prevented the second maintenance fee being returned to ONERA. He stated that Gevers France handled about 8423 maintenance fees in 2010, and that all the three persons working in the annuity department had many years experience in the field.

(5) Declaration of Tom Hoffmann

The Declaration of Tom Hoffmann stated that Denнемeyer & Company never received any instructions from Martinet & Lapoux to pay the first maintenance fee in the subject patent. The exhibits attached to his Declaration indicate his review of the records of Martinet & Lapoux for the pertinent time period.

(6) Conclusion

Petitioner respectfully contends that the Declarations and accompanying exhibits clearly establish the serious consideration and due care that the firms of

Martinet & Lapoux and Gevers France have given to the docketing and payment of patent maintenance fees. Both firms have exercised the diligence that is generally used and observed by prudent and careful men in relation to their most important business. It permits them to rely on worthy and reliable employees, and such other means and instrumentalities as are usually employed in such important business. The failure to pay the first and second maintenance fees here may properly be said to be unavoidable, all other conditions of promptness in its rectification being present.

For the reasons set for above, it is courteously requested that the Director declare that the delay in providing the first and second maintenance fees was unavoidable, and that the subject patent be revived.

The \$400 petition fee is submitted herewith. Please charge any addition Government fees resulting to our Account No. 50-5773. Also please note the mailing address of the undersigned attorney.

Respectfully submitted,

November 5, 2012

/Lawrence E. Laubscher, Sr./

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CERTIFICATE OF TRANSMISSION

I hereby certify that this correspondence is being transmitted to: Mail Stop: Petitions, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 via EFS-web on November 5, 2012.

Signature: /Lawrence E. Laubscher, Sr./  
Lawrence E. Laubscher, Sr.